

(3) *Costs.* If such a final order is issued, the Secretary, at the request of the complainant, shall assess against the respondent a sum equal to the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred by the complainant, as determined by the Secretary, for, or in connection with, the bringing of the complaint upon which the final order was issued.

(4) *Dismissals.* If the Secretary determines that the party charged has not violated the law, an order shall be issued denying the complaint.

§ 24.7 Judicial review.

(a) Within 60 days after the issuance of a final order under § 24.6, above, any person adversely affected or aggrieved by such order may file a petition for review of the order in the United States court of appeals for the circuit in which the violation with respect to which the order was issued allegedly occurred. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(b) An order of the Secretary with respect to which review could have been obtained under paragraph (a) shall not be subject to judicial review in any criminal or other civil proceeding.

(c) *Certification of record for judicial review.* The record of a case, including the record of proceedings before the administrative law judge, shall be transmitted by the Secretary to the appropriate court pursuant to the rules of such court.

§ 24.8 Enforcement proceedings.

(a) Whenever a person has failed to comply with a final order issued by the Secretary of Labor under § 24.6, above, the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this section, the district courts shall have jurisdiction to grant to all appropriate relief including, but not limited to, injunctive relief, compensatory and exemplary damages.

(b)(1) Any person on whose behalf a final order was issued by the Secretary of Labor under § 24.6, above, may com-

mence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(2) The court, in issuing any final order under this section may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(c) Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28 of the U.S. Code.

§ 24.9 Exception.

This part shall have no application to any employee alleging activity prohibited by this part who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of a Federal statute listed in § 24.1, above.

PART 25—RULES FOR THE NOMINATION OF ARBITRATORS UNDER SECTION 11 OF EXECUTIVE ORDER 10988

Sec.

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AUTHORITY: Sec. 11, E.O. 10988, 3 CFR 1959-1963 Comp. p. 521.

SOURCE: 25 FR 9441, Sept. 13, 1966, unless otherwise noted.

§ 25.1 Purpose and scope.

These procedures govern the nomination of arbitrators by the Secretary to perform the advisory functions specified under section 11 of Executive Order 10988. Any arbitrators so nominated

will be available for either or both of the following purposes:

(a) To investigate the facts and issue an advisory decision with respect to the appropriateness of a unit of Federal employees for the purpose of exclusive recognition and as to related issues submitted for consideration; or

(b) To determine and advise whether an employee organization represents a majority of employees in an appropriate unit by conducting or supervising an election (wherein a majority of those voting, provided there is a representative vote, cast their ballots for or against representation), or by other appropriate means. A request for a nomination will be considered as contemplating the performance of functions within the above categories if it specifies as a purpose obtaining an advisory decision on one or more questions involved in a unit determination or determination of majority status, such as an advisory decision on the eligibility of voters or the right to appear on the ballot, arising in connection with an election to be held, or on a question relating to matters affecting the results of an election which took place after the agreement to conduct the election had been entered into, provided such conduct materially affected the results of the election. Subject to compliance with these procedures, the Secretary will nominate an arbitrator whenever he is so requested by an agency or by an employee organization which is seeking recognition as the exclusive representative of Federal employees in a prima facie appropriate unit and which meets all the prerequisites for seeking such recognition.

§ 25.2 Definitions.

When used in these procedures:

(a) *Order* means Executive Order No. 10988;

(b) *Agency, employee organization, and employee* have the same meaning as in the Order;

(c) *Recognition* means recognition which is or may be accorded to an employee organization pursuant to the provisions of the Order;

(d) *Secretary* means the Secretary of Labor.

§ 25.3 Requests for nomination of arbitrators: Filing, disputes, parties, time.

(a) Requests for nominations should be filed only where there exists a dispute or problem which cannot more appropriately be resolved through regular agency procedures. Parties, therefore, are expected to eliminate from their requests matters not necessary to the resolution of such dispute or problem and to use their best efforts to secure agreement on as many issues as possible before making the request.

(b) Requests for nominations may be filed either by an agency, or by an employee organization as described in § 25.1, or jointly by an agency and one or more employee organizations. Joint requests are encouraged.

(c) Subject to the provisions of paragraph (a) of this section, the Secretary will entertain on its merits a request by an employee organization for nomination of an arbitrator on a question of unit determination which is made within 30 days after receipt of an agency's final unit determination or 75 days after an appropriate request for exclusive recognition and no final unit determination has been received from the agency, provided the organization has observed any reasonable time limits established by the agency for the processing of such requests within the agency. The Secretary will entertain on its merits a request by an employee organization for nomination of an arbitrator on a question of majority representation which is made within 15 days after an agency's decision with respect to a determination of majority representation. Any request by an employee organization for the nomination of an arbitrator will be considered untimely if:

(1) A written request for exclusive recognition was not made prior to the grant of such recognition to another organization provided such grant was preceded by posted notice to all employees in the unit and written notice to all organizations known to represent such employees that a request for exclusive recognition was under consideration.

(2) A written request for exclusive recognition was not made within 5 days